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[FILED: APR. 17, 1975]

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 73-2134

UNITED STATES OF AMERICA, ETC., ET AL., *Appellee,*

v.

JAMES R. COSON, etc., ET AL., *Appellant.*

Opinion

Appeal from the United States District Court
for the Eastern District of California

Before: CHAMBERS, CHOY, and GOODWIN, Circuit Judges

CHAMBERS, Circuit Judge:

The Internal Revenue Service wants to inspect a mass of business records for several years of thirteen corporations apparently dominated by Coson. On a request to enforce a massive summons, the district court has ordered compliance. Thus, we have an appeal.

With the gracefulness of an elephant, the Internal Revenue Service has given Coson a lot to complain about. But we find the complaints mostly beyond our reach.

Early in January 1973, Coson was served with 157 summonses for books and records, apparently one for each of several years for each of several corporations. Coson appeared but demanded witness fees and mileage on each summons. And possibly he was right. So the first set went awry. The Service, without regard for the number of trees required to produce the pulp to produce the paper, then got out another group of summons, again about as massive as the first set, requiring attendance on another day. This group was withdrawn.

Finally, round three arrived. The Service issued one comprehensive summons. The summons day arrived. Coson appeared, but declined cooperation until paid alternately

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$260.00 plus mileage or $8,840.00 plus mileage for the government's previous annoying summonses now cancelled. His well-known demand had induced the latest summons.

Considered alone, the sum of $22.00 offered by the Internal Revenue Service agent on the comprehensive summons would be enough.

As part of the scene, at the last go round, the agent tendered Coson a chance for him to sign a voucher which we understand would have produced a good government check for $22.00. Coson quibbles about the form of the claim. But he could have corrected it. And, we shall not require the internal revenue agents to go around like narcotic agents with bait money.

We are impressed that the Service should not be able to summon in a record custodian even twice without the tender of, or arrangements for quick payment of, fees for the past appearances and the present one. We hold, therefore, that on the first abortive appearance Coson was entitled to be shown the way to the paymaster for $22.00. (We do not rule on what he would be entitled to if he had literally complied with all of the 157 summonses.) We hold that in appearing on the third or omnibus summons he was entitled to $22.00 now and $22.00 for the delinquency, or $44.00. Thus, the offer was defective on the omnibus summons. Now, when the summons is enforced, he will have to come again and he will be entitled to cash, or something almost as good, such as a readily payable claim, for his new appearance, or a total of $66.00. This assumes his mileage will be the same. The order enforcing the summons should be amended to assure payment for Coson's three appearances before he hands over the records for inspection.

We believe we are following *Roberts* v. *U.S.*, 397 F.2d 968 (5th Cir. 1968).

We are not impressed with other points raised by the appellant. If Miranda should be violated, that can be

raised as a shield at the appropriate time. If the Service tries to search beyond the bounds of propriety under the summons, Coson can go back to the district court. The court properly handled the discovery issue correctly and the arguments about the Freedom of Information Act seem inappropriate.

Coson is indignant about either an assessment or the fixing of a lien by the Internal Revenue Service. He says it represents an outrageous breach of faith by the Service and that he wants discovery about it. If it is true, the Service should do, in common fairness, something to correct it. But we hold it is no part of this proceeding.

The order for enforcement should be modified as indicated above in a way that Coson will not be forced to fall back on the Tucker Act. It is so ordered.

There will be no costs.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

Honorable M. D. Crocker, District Judge

No. F-137-Misc.

UNITED STATES OF AMERICA, etc., ET AL., *Petitioners,*

v.

JAMES R. COSON, etc., ET AL., *Respondents.*

Reporter's Transcript of Proceedings

Fresno, California

April 4, 1973

APPEARANCES:

(As previously noted).

Pages: 41-159

[154] made in our answer, they haven't put any affirmative prove in on that.

I would merely submit, your Honor, the case as we have made it, the best we could, and submit the affirmative defenses and earnestly submit that the petition and the order to show cause be denied, your Honor.

THE COURT: Well, I don't see any basis for not enforcing the summons in this case. I am a little concerned that Mr. Coson may not have access to some of the records requested.

MR. TEEL: Your Honor, it is for that reason the Government made the corporations respondents as well as Mr. Coson. If Mr. Coson doesn't have access to certain of the records then an officer of the corporation could bring the records.

MR. FRASER: I want to assure the court that as far as the records, except General Sprinkler Corporation, there

would be no problem. We have never made an attempt to conceal any of the records.

I will submit, your Honor, we have made no secret of Mr. Coson's relationship with General Sprinkler, and that on April 1st he would be leaving.

MR. TEEL: Again, your Honor, we made the corporations parties to this proceedings, and if, for some reason, Mr. Coson does not have custody of the [155] records, the corporations have been notified of this proceedings, to examine their records, and it will be a pro forma matter for them to designate the officer who does have custody, and they have been parties and have raised all the contentions they have regarding the enforceability of the summons, and I see no reason why enforcement should not be granted.

THE COURT: Well, I wanted to make it clear that Mr. Coson is not going to be required to produce records that he can't produce, counsel.

MR. TEEL: Yes, your Honor, that will be very clear.

THE COURT: It's only the corporations that will be required to do so.

Very well. I will grant the Government's petition for enforcement of the Internal Revenue summons, with that understanding, and will deny the protective order as requested by the respondents.

MR. FRASER: May I make a motion, your Honor, under Rule 62 and under Reisman v. Caplan, that we would intend and do intend, your Honor, to file notice of appeal. I believe we have an automatic stay of ten days under Rule 62, during which time we would perfect our appeal, and we would ask the court at this time for a stay until the appellate proceedings have been decided.

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[Filed July 15, 1975]

No. 73-2134

Docket No. F-137

UNITED STATES OF AMERICA, *Petitioner-Appellee,*

v.

JAMES R. COSON, ET AL., *Respondent-Appellant.*

Order Staying Issuance of Mandate

Upon application of Edgar L. Fraser, Esq., counsel for the Appellants, and good cause appearing, IT IS ORDERED that the issuance, under Rule 41(a) of the Federal Rules of Appellate Procedure, of the certified copy of the judgment of this Court in the above cause be and hereby is stayed pending the filing, consideration and disposition by the Supreme Court of the United States of a petition for writ of certiorari to be made by the Appellants herein, provided such petition is filed in the Clerk's Office of the Supreme Court of the United States on or before August 1, 1975.

In the event the petition for writ of certiorari is granted, then this stay is to continue pending the final disposition of the case by the Supreme Court of the United States.

/s/ RICHARD H. CHAMBERS
Richard H. Chambers
United States Circuit Judge.

Dated: San Francisco, Calif. July 14, 1975.

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, *etc., et al., Petitioner-Appellee,*

v.

JAMES R. COSON, *etc., et al., Respondents-Appellants.*

No. 73-2134

Affidavit of Edgar L. Fraser in Support of Motion To Augment Record

STATE OF CALIFORNIA }
COUNTY OF LOS ANGELES } ss.

EDGAR L. FRASER, Esq., being first duly sworn deposes and says:

1. That all times herein mentioned he has been and now is an attorney at law and general partner in the firm of Wadsworth, Fraser & Dahl, and has represented all of the appellants and respondents in the above entitled action since the commencement of this action.

2. Affiant did receive a letter, dated January 2, 1974, signed by Lamont R. Olson, Attorney, Regional Counsel, Internal Revenue Service, Western Division, stating that the tax investigation of JAMES R. and ANGELA COSON for the years 1968 through 1971, the corporate income tax liabilities of FRESNO BRASS WORKS, INC. for the fiscal years ending July 31, 1968 through July 31, 1970, and the corporate income tax liabilities of Catalina Brass Company, Inc. for the fiscal years ending June 30, 1969 and June 30, 1970, had been referred to the Office of Regional Counsel with a recommendation that criminal proceedings be instituted against JAMES R. COSON, CATALINA BRASS CO., INC. and FRESNO BRASS WORKS for the years in question. A copy of said letter is attached hereto marked Exhibit "A".

3. Affiant received a second letter dated May 17, 1974, also signed by said Lamont R. Olson, Attorney, on behalf of the said Regional Counsel advising that the case had been forwarded to the Department of Justice, Washington,

D.C. A copy of said letter is attached hereto marked Exhibit "B".

4. On July 29, 1974, affiant personally conferred with Mr. James L. Powers, Attorney, Criminal Tax Division, Department of Justice, Washington, D.C., and discussed the criminal aspects of the case.

5. In September of 1974, affiant was orally advised by said James L. Powers that the Department of Justice had referred the case to the Special Agent in Fresno, California. Under letter dated September 12, 1974, affiant addressed a letter to Mr. Marshall Jennings, Revenue Agent, who had been auditing the records of the appellants, and inquired "I specifically desire to know whether you and Special Agent Larson intend to revive the criminal investigation".

6. Affiant then received a letter dated September 17, 1974, from Philip G. Larson, Special Agent, District Director Internal Revenue Service, Fresno, stating that "the criminal investigations of JAMES R. COSON, FRESNO BRASS WORKS and CATALINA BRASS COMPANY are still open. Because of this, and due to the fact that summons enforcement proceedings are pending, it is felt that we are in no position to discuss any possible civil settlements at this time." A copy of this letter is attached hereto marked Exhibit "C".

7. With respect to the decision of this Honorable Court in *United States* v. *Cromer*, 483 F.2d 99 (9th Cir. 1973), which is discussed in detail in appellants' accompanying memorandum of points and authorities, affiant avers:

(a) Affiant studied the opening brief to this Honorable Court of appellant George Cromer and found that appellant failed to include therein any reference or citation to the summons enforcement decision in *United States* v. *Kyriaco*, 326 Fed. Supp. 1184 (D.C. Cal. 1971), which was heard by the District Court with the blessing of the Supreme Court of the United States, and is diametrically opposed to *Cromer*.

(b) Affiant also examined the brief of appellees, United States of America, et al., and found that the only

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reference to *Kyriaco* was set forth on p. 16 of the appellees brief and erroneously cited as being in support of the following rule announced in the *Cromer* decision:

> "These cases support our conclusion that the time of issuance is the significant date in terms of the validity of the summons. They recognize that if there is a proper civil purpose at that time, events occurring subsequent thereto do not vitiate that purpose, as the Internal Revenue has a continuing duty to determine and collect the civil liability."

A copy of said p. 16 is attached hereto marked Exhibit "D".

(c) On March 5, 1975, appellants obtained from Thomas A. Baird, Esq., one of the counsel in *Kyriaco,* a copy of the Kyriaco Petition for a Writ of Certiorari to the Supreme Court of the United States for review of the judgment and opinion of the Court of Appeals for the Ninth Circuit, *United States* v. *Ruggeiro,* 425 F.2d 1069 (9th Cir. 1971), which case was re-entitled *Andrew Kyriaco* v. *United States.* Affiant avers that the references in the accompanying memorandum of points and authorities to allegations in the petition for a writ of certiorari are true and correct.

(d) On March 6, 1975, Orin Grossman, Esq., one of the attorneys for George Cromer, advised affiant that he had presented the oral argument of the cause to the United States Court of Appeals for the Ninth Circuit, and that during such argument he had not mentioned the case *United States* v. *Kyriaco,* supra.

/s/ Edgar L. Fraser
Edgar L. Fraser

Subscribed and sworn to before me this 14 day of March, 1975.

/s/ Carol A. Nicholas
Carol A. Nicholas

Notary Public in and for said County and State

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Exhibit "A"

DEPARTMENT OF THE TREASURY
REGIONAL COUNSEL
INTERNAL REVENUE SERVICE
WESTERN REGION

Address any reply to:
447 Sutter St., Room 628,
San Francisco, Calif. 94108

Date: Jan. 2, 1974

In reply refer to:

CC:SF-CT-105-73, 106-73, 107-73
LRO

Certified Mail
Return Receipt Requested

Edgar L. Fraser, Esq.
4050 Wilshire Blvd., Suite 312
Los Angeles, California 90005

In re: James R. Coson, et ux.
Fresno Brass Works
Catalina Brass Co.
Fresno, California

Dear Mr. Fraser:

A report covering an investigation of the joint income tax liabilities of James R. and Angela Coson for the years 1968 through 1971, the corporate income tax liabilities of Fresno Brass Works, Inc., for the fiscal years ending July 31, 1968, through July 31, 1970, and the corporate income tax liabilities of Catalina Brass Co., Inc., for the fiscal years ending June 30, 1969, and June 30, 1970, has been referred to this office with a recommendation that criminal proceedings be instituted against James R. Coson for evading his and his wife's personal income taxes for 1968 and 1969, for evading the corporate income taxes

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of Fresno Brass Works, Inc., for the fiscal years ending July 31, 1968 through July 31, 1970, and for evading the corporate income taxes of Catalina Brass Co., Inc., for the fiscal years ending June 30, 1969, and June 30, 1970. The report also contains a recommendation of prosecution for income tax evasion under *Int. Rev. Code of 1954,* § 7201 against Fresno Brass Works for the fiscal years ended July 31, 1968, through July 31, 1970, and against Catalina Brass Company for the fiscal years ended June 30, 1969, and June 30, 1970.

This will confirm the conference to discuss the cases, set during our telephone conversation on December 28, 1973. The conference has been scheduled with me in Room 803 at the above address for January 4, 1974, at 10:30 a.m. If you wish to contact me by telephone, my number is 415-556-8715.

Pursuant to our agreement, it is my understanding that you will bring Powers of Attorney with a written declaration concerning your qualifications to practice in accordance with 5 U.S.C. § 500, authorizing you to represent James R. and Angela Coson in their individual tax liabilities for the above-designated years, Fresno Brass Works, Inc., in its corporate tax liabilities for the above-designated years, and Catalina Brass Co., Inc., in its corporate tax liabilities for the above-designated years.

Very truly yours,

LAMONT R. OLSON
Lamont R. Olson
Attorney

1cc—William N. Snell, Esq.

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Exhibit "B"

DEPARTMENT OF THE TREASURY
REGIONAL COUNSEL
INTERNAL REVENUE SERVICE
WESTERN REGION

Address any reply to:
447 Sutter St., Room 628,
San Francisco, Calif. 94108

Date: May 17, 1974

In reply refer to:
CC:SF-CT-105-73, 106-73, 107-73
LRO

E. L. Fraser, Esq.
4050 Wilshire Boulevard, Suite 312
Los Angeles, California 90010

In re: James R. Coson, et ux.
Fresno Brass Works
Catalina Brass Co.
Fresno, California

Dear Mr. Fraser:

Reference is made to the conference in the above matter which was held in this office on January 4, 1974, and to your request that you be notified of the action taken by this office.

This is to advise that the case has been forwarded to the Department of Justice, Washington, D. C.

Sincerely yours,

LAMONT R. OLSON
Lamont R. Olson
Attorney

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Exhibit "C"

DEPARTMENT OF THE TREASURY
DISTRICT DIRECTOR
INTERNAL REVENUE SERVICE

Address any reply to:
Intelligence Division
1130 "O" Street, Room 1210
Fresno, California 93721

Date: September 17, 1974

In reply refer to: I-1:PGL:an

Mr. E. L. Fraser, Attorney
4050 Wilshire Boulevard, Suite 312
Los Angeles, California 90010
Dear Mr. Fraser:

In re: James R. Coson et al.

Reference is made to your letter of September 12, 1974 addressed to Marshall P. Jennings, Revenue Agent. You requested therein a meeting with him and me to discuss the audits of James R. Coson and related corporations.

I wish to inform you that as of this date, the criminal investigations of James R. Coson, Fresno Brass Works, and Catalina Brass Company are still open. Because of this and due to the fact that the summons enforcement proceedings are pending, it is felt that we are in no position to discuss any possible civil settlements at this time.

Yours Very Truly,

PHILIP G. LARSON
Philip G. Larson
Special Agent

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STATUTORY PROVISIONS INVOLVED

United States Code, Title 26:

Section 7402. Jurisdiction of District Courts.

* * * *

(b) To Enforce Summons.—If any person is summoned under the internal revenue laws to appear, testify, or to produce books, papers, or other data, the district court of the United States for the district in which such person resides or may be found shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers, or other data.

Section 7602. Examination of Books and Witnesses.

For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax or the liability at law or in equity of any transferee or fiduciary of any person in respect of any internal revenue tax, or collecting any such liability, the Secretary or his delegate is authorized—

(1) To examine any books, papers, records, or other data which may be relevant or material to such inquiry;

(2) To summon the person liable for tax or required to perform the act, or any officer or employee of such person, or any person having possession, custody, or care of books of account containing entries relating to the business of the person liable for tax or required to perform the act, or any other person the Secretary or his delegate may deem proper to appear before the Secretary or his delegate at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and

(3) To take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry.

Section 7604. Enforcement of Summons.

(a) JURISDICTION OF DISTRICT COURT.—If any person is summoned under the internal revenue laws to appear, to testify, or to produce books, papers, records, or other data, the United States district court for the district in which such person resides or is found shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers, records, or other data.

(b) ENFORCEMENT.—Whenever any person summoned under section 6420(e)(2), 6421(f)(2), 6424(d)(2), 6427(e)(2), or 7602 neglects or refuses to obey such summons, or to produce books, papers, records, or other data, or to give testimony, as required, the Secretary or his delegate may apply to the judge of the district court or to a United States commissioner for the district within which the person so summoned resides or is found for an attachment against him as for a contempt. It shall be the duty of the judge or commissioner to hear the application, and, if satisfactory proof is made, to issue an attachment, directed to some proper officer, for the arrest of such person, and upon his being brought before him to proceed to a hearing of the case; and upon such hearing the judge or the United States commissioner shall have power to make such order as he shall deem proper, not inconsistent with the law for the punishment of contempts, to enforce obedience to the requirements of the summons and to punish such person for his default or disobedience.

BRIEF FO

RESPONDE

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ENTS IN

SITION

In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-183

JAMES R. COSON, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

Petitioners seek review of the decision in this case upholding the enforcement of an internal revenue summons to produce corporate books and records. The district court ordered the summons enforced (Pet. App. 4a-5a), and the court of appeals affirmed (Pet. App. 1a-3a).

After briefs had been filed in the court of appeals and prior to oral argument, the Regional Counsel of the Internal Revenue Service recommended to the De-

partment of Justice that criminal proceedings for violation of the internal revenue laws be instituted against petitioner Coson and two of his corporations. Subsequently, however, the Department of Justice returned the case to the Internal Revenue Service for further investigation.

Petitioners moved in the court of appeals to enlarge the record in order to argue that the Internal Revenue Service's recommendation for criminal prosecution subsequent to the issuance of the summons rendered the summons unenforceable. The court of appeals denied the motion because the matter had not been presented to the district court. The basis upon which petitioners seek certiorari is their assertion that the internal revenue summons is unenforceable because (Pet. 2) its "sole purpose * * * is to aid prosecution of the criminal case * * *."

1. In *Donaldson* v. *United States*, 400 U.S. 517, 536, this Court held that "an internal revenue summons may be issued in aid of an investigation if it is issued in good faith and prior to a recommendation for criminal prosecution." The summons in this case meets the *Donaldson* test since it was issued prior to the Service's recommendation for prosecution.

Contrary to petitioners' assertion (Pet. 10), there is no "conflict and confusion" with respect to the question whether a summons can be enforced if the Internal Revenue Service recommends prosecution after its issuance but before its enforcement. Six circuits have held that a summons is enforceable under such circumstances. See *In re Magnus, Mabee & Reynard*,

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Inc., 311 F.2d 12, 14-15 (C.A. 2), certiorari denied, 373 U.S. 902; *United States* v. *Weingarden*, 473 F.2d 454, 461 (C.A. 6); *United States* v. *Held*, 435 F.2d 1361, 1364 (C.A. 6), certiorari denied, 401 U.S. 1010; *United States* v. *Moriarty*, 435 F.2d 347, 348 (C.A. 7); *United States* v. *Giordano*, 419 F.2d 564, 568, n. 5 (C.A. 8), certiorari denied, 397 U.S. 1037; *United States* v. *Cromer*, 483 F.2d 99, 101 (C.A. 9); *United States* v. *Hodgson*, 492 F.2d 1175, 1177 (C.A. 10).

While there are dicta in *United States* v. *Billingsley*, 469 F.2d 1208, 1210 (C.A. 10), and in *United States* v. *Monsey*, 429 F.2d 1348, 1351 (C.A. 7), suggesting that the commencement of a criminal proceeding subsequent to the issuance of a summons should be considered in determining its enforceability, both the Tenth and Seventh Circuits subsequently in *United States* v. *Hodgson*, *supra*, 492 F.2d at 1177, and in *United States* v. *Moriarty*, *supra*, 435 F.2d at 349, allowed the enforcement of a summons after criminal tax indictments had been returned. In *Moriarty*, the Seventh Circuit explained that its decision in *Monsey* was not to be read to prohibit enforcement of an internal revenue summons in such circumstances. As that court noted, a recommendation for prosecution after the issuance of a summons does not, by itself, establish that the summons was issued solely in furtherance of the criminal prosecution as long as the civil purpose for investigation continues. See *United States* v. *Moriarty*, *supra*, 435 F.2d at 349.[1]

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[1] Petitioners' reliance (Pet. 8, 9, 12) upon *United States* v. *Zack*, 375 F. Supp. 825 (D. Nev.), and *United States* v.

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Petitioners further argue (Pet. 7-8) that this Court's denial of certiorari in *Kyriaco* v. *United States*, 401 U.S. 922, with leave to raise the claim of the subsequent criminal investigation in the lower courts, establishes that the summons in this case should not be enforced. But the Court's action in *Kyriaco* does not suggest that an intervening recommendation for criminal prosecution renders a summons unenforceable. At most, this Court simply allowed the petitioner in that case an opportunity to present a subsequent factual development to the district court. See *United States* v. *Weingarden*, *supra*, 473 F.2d at 461, n. 12.

Since the lower courts have not yet passed upon petitioners' claim, there is no basis for review by this Court at this juncture. Petitioners are at most en-

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Kyriaco, 326 F. Supp. 1184 (C.D. Cal.), is misplaced. In *Zack*, the district court found that a search of the taxpayer's offices pursuant to a warrant one week before the issuance of the summons demonstrated that the sole object of the investigation was to gather data for a criminal prosecution. However, this decision was recently reversed by the court of appeals (No. 74-2467, July 16, 1975). That court observed that if there was a proper civil investigation, the search warrant would not have been issued to further a solely criminal investigation and that the district court therefore erred in concluding that the issuance of a search warrant was equivalent to an indictment or a recommendation for prosecution. Moreover, although the taxpayer prevailed in *Kyriaco*, he subsequently complied with the summons, thereby rendering the case moot. See *United States* v. *Weingarden*, *supra*, 473 F.2d at 461, n. 12.

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titled to raise the point in the district court as the taxpayer did in *Kyriaco*.[2]

Finally, if, as petitioners urge, an internal revenue summons would be rendered unenforceable by a recommendation for criminal prosecution made subsequent to its issuance, taxpayers would be encouraged to delay compliance as long as possible by resisting enforcement in the courts. Because of the statutes of limitations with respect to criminal tax prosecutions, the Internal Revenue Service would often be compelled to make a recommendation to the Department of Justice for criminal prosecution subsequent to its issuance of a summons but before its enforcement by the courts. Taxpayers should not be enabled thus to defeat the enforcement of the Service's summonses by means of resistance and delay.[3]

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

OCTOBER 1975.

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[2] Subsequent to this Court's denial of certiorari in *Kyriaco*, however, the Ninth Circuit in *United States* v. *Cromer*, 483 F.2d 99, rejected the contention advanced by petitioners here.

[3] Moreover, the documents sought by the summons here are corporate books and records which are not eligible for the Fifth Amendment privilege against self-incrimination. Hence, even if petitioner were indicted, such records could be obtained by a grand jury or trial subpoena. See *Bellis* v. *United States*, 417 U.S. 85, 88-90, 100, and cases cited therein.

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